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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,674	03/31/2004	David Harouche	6038.005	3567
7590	10/13/2006			EXAMINER WOO, ISAAC M
Barry E. Negrin Levisohn, Berger & Langsam, LLP 19th Floor 805 Third Avenue New York, NY 10022			ART UNIT 2166	PAPER NUMBER
DATE MAILED: 10/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/812,674	HAROUCHE, DAVID	
	<b>Examiner</b>	<b>Art Unit</b>	
	Isaac M. Woo	2166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 March 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.  
 4a) Of the above claim(s) 24-30 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-23 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/7/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

1. Applicant elected Group I, in response to the Restriction Requirement set forth in the Office Action mailed September 20, 2006, comprising claims 1-23, without traverse. Non-elected Group II (claim 24-30), is withdrawn from further consideration.
2. Claims 1-23 are presented for examination for this office action.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-23 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106 (II) (A):

*A. Identify and Understand Any Practical Application Asserted for the Invention*

*The claimed invention as a whole must accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that*

*represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); In re Ziegler, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600,1603-06 (Fed. Cir. 1993)). Accordingly, a complete disclosure should contain some indication of the practical application for the claimed invention, i.e., why the applicant believes the claimed invention is useful.*

*Apart from the utility requirement of 35 U.S.C. 101, usefulness under the patent eligibility standard requires significant functionality to be present to satisfy the useful result aspect of the practical application requirement. See Arrhythmia, 958 F.2d at 1057, 22 USPQ2d at 1036. Merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make the invention eligible for patenting. For example, a claim directed to a word processing file stored on a disk may satisfy the utility requirement of 35 U.S.C. 101 since the information stored may have some "real world" value. However, the mere fact that the claim may satisfy the utility requirement of 35 U.S.C. 101 does not mean that a useful result is achieved under the practical application requirement. The claimed invention as a whole must produce a "useful, concrete and tangible" result to have a practical application.*

Claims 1 and 13 are non-statutory. Because claim 1 limitations end at "transmits the employee's identifier and test information the central server" and claim 13 limitations end at the step of "transmitting from the local computer to the central computer", which does not provide any tangible results and practical real world application. Thus, the claims 1 and 13 are not a statutory and should be rejected under 35 U.S. C. § 101 as not being tangible.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Osborne et al (U.S. Pub. No. 2002/0106622, hereinafter, "Osborne").

With respect to claim 1, Osborne teaches at least one local computer (i.e., 102, testing unit in fig. 1); a training program resident with the local computer, the training program including an interactive test having questions (page 1, sections 0003-0004, page 2, sections 0021-0022, page 4, section 0043); a first human-computer interface connected to the local computer enabling an employee to enter answers to the questions in the local computer (page 1, sections 0003-0004, page 2, sections 0021-0022, page 4, section 0043); a remote computer server at a central location communicatable with the at least one local computer (103a, in fig. 1, page 3, section 0035), wherein when an employee interacts with the training program, the local computer transmits only the employee's identifier (page 4, section 0045) and test

information to the central server (page 1, sections 0003-0004, page 2, sections 0021-0022, page 4, section 0043).

With respect to claim 2, Osborne teaches software resident on the central server for sorting the test information (page 3, section 0035).

With respect to claim 3, Osborne teaches second interface enabling a manager to access the test information on the central server (page 2, section 0019).

With respect to claim 4, Osborne teaches software second interface includes an Internet connection allowing remote access to the central server (page 3, section 0019).

With respect to claim 5, Osborne teaches dynamically created website, wherein when a manager accesses the website, the test information is visually updated and presented to the manager (fig. 5a-e, page 6, sections 0061-0063).

With respect to claim 6, Osborne teaches sorting software for sorting the test information by at least one of the following categories: by store, by employee, by question, by training program, by employee type, by score, by test start time, by test end time, by test duration, by question, by answer, by employee question response time, by district, by region, and company-wide (page 3, section 0035).

Art Unit: 2166

With respect to claim 7, Osborne teaches first interface includes at least one of a keyboard, a mouse, a touch-screen, voice recognition software, a hand-held device, a wireless hand-held device, and an interactive voice response system using a telephone (page 3, sections 0030-0039).

With respect to claim 8, Osborne teaches local computer being owned by a first company and the remote server being owned by a second information company servicing the first company (page 3, sections 0030-0039).

With respect to claim 9, Osborne teaches multiple of the at least one local computer are each provided in selective communication with the server (fig. 1, page 3, sections 0030-0039).

With respect to claim 10, Osborne teaches employee's answers are tallied by the sorting software, results from the tallying are transmitted from the server to the local computer and are accessible to the employee, the results including at least one of the correct answers, the employee's running score, and the employee's final score (fig. 1, page 3, sections 0030-0039).

With respect to claim 11, Osborne teaches a CD-ROM playable on the local computer; a DVD playable on the local computer; a videotape playable in close proximity to the local computer; an audio cassette playable in close proximity to the

local computer; and at least one software file on the local computer (fig. 1, page 3, sections 0030-0039).

With respect to claim 12, Osborne teaches employee identifier, test version identification, test start time, test completion time, test duration, time spent on each question, and the answers entered by the employee (fig. 1, page 3, sections 0030-0039).

With respect to claim 13, Osborne teaches a) presenting a training program including a test having questions on at least one device associated with a local computer (i.e., 102, testing unit in fig. 1); b) enabling an employee to take the test and enter answers to the questions on the local computer via a first human-computer interface connected to the local computer (page 1, sections 0003-0004, page 2, sections 0021-0022, page 4, section 0043); c) providing a remote computer server at a central location in communication with the at least one local computer (103a, server in fig. 1, page 3, section 0035), d) transmitting from the local computer to the central server only the employee identifier (page 4, section 0045) and test information when an employee interacts with the training program (page 1, sections 0003-0004, page 2, sections 0021-0022, page 4, section 0043).

With respect to claim 14, Osborne teaches enabling a manager to access the test information remotely. (fig. 1, page 3, sections 0030-0039).

With respect to claim 15, Osborne teaches a second human-computer interface in communication with the server. (fig. 1, page 3, sections 0030-0039).

With respect to claim 16, Osborne teaches dynamically creating a web page with updated test information when the manager accesses the test information (fig. 1, page 3, sections 0030-0039).

With respect to claim 17, Osborne teaches Osborne teaches sorting software for sorting the test information by at least one of the following categories: by store, by employee, by question, by training program, by employee type, by score, by test start time, by test end time, by test duration, by question, by answer, by employee question response time, by district, by region, and company-wide (page 3, section 0035).

With respect to claim 18, Osborne teaches local computer being owned by a first company and the remote server being owned by a second information company servicing the first company (page 3, sections 0030-0039).

With respect to claim 19, Osborne teaches multiple of the at least one local computer are each provided in selective communication with the server (fig. 1, page 3, sections 0030-0039).

Art Unit: 2166

With respect to claim 20, Osborne teaches transmitting from the server to the local computer for access by the employee at least one of: i) answers tallied on the server; ii) a test score; iii) test progress; and iv) test authorization (fig. 1, page 3, sections 0030-0039).

With respect to claim 21, Osborne teaches first company pays a subscription fee to the second information company for each of its employees participating in the training program. (fig. 1, page 3, sections 0030-0039).

With respect to claim 22, Osborne teaches detecting employee cheating on a training program test by recording the employees' response time to each question (page 1, sections 0003-0004, page 2, sections 0021-0022, page 4, section 0043).

With respect to claim 23, Osborne teaches comparing a given response time by one employee to a given question to other response times by other employees to the same question (page 1, sections 0003-0004, page 2, sections 0021-0022, page 4, section 0043).

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac M. Woo whose telephone number is (571) 272-4043. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam can be reached on (571) 272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Isaac Woo  
October 11, 2006